A

PERWIRA AFFIN BANK BHD

v.

SELANGOR PROPERTIES SDN BHD & ORS

B

COURT OF APPEAL, PUTRAJAYA
ABDULL HAMID EMBONG FCJ
HASAN LAH JCA
ABDUL MALIK ISHAK JCA
[CIVIL APPEAL NO: B-02-196-2002]

C

5 NOVEMBER 2009

LAND LAW: *Lien - Creation - Nature and effect of a lien - Whether interest of lien-holder similar to that of co-proprietor*

D

LAND LAW: *Lien - Deposit of title deeds - Whether only registered proprietor could deposit title deeds with lender in order to create valid lien - Whether beneficial owners entitled to deposit title deeds in order to create valid lien - Intention to create a lien, how inferred - National Land Code 1965, s. 281*

E

LAND LAW: *Restraints on dealings - Caveats - Lien-holders' caveats - Creation and effect of - Whether lien-holders considered secured creditors with entry of lien-holders caveat - Remedies available to lien-holders*

WORDS & PHRASES: *'other charge on land' - Section 21(1)*

F

Limitation Act 1953 - Whether 'other charge on land' includes statutory and equitable charges or liens

WORDS & PHRASES: *'proprietor' - Section 281 National Land Code 1965 - Whether 'proprietor' includes a beneficial owner*

G

The first respondent was the registered proprietor of a piece of land ("the land"). It transferred the land to the second and third respondents, making them beneficial owners of the land. The second respondent then obtained an overdraft facility from the appellant. To secure the facility, both the second and third

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respondents deposited the original title deeds of the land with the appellant to enable the appellant to create a lien over the land. The appellant thereafter lodged a lien-holder's caveat over the and. The first respondent consented to the deposit of the land title with the appellant to secure the appellant's overdraft facility.

I

The second respondent defaulted repayments under the overdraft facility. The appellant commenced proceedings in the High Court for an order for sale. The first respondent did not oppose the

appellant's application. However, the High Court dismissed the appellant's application prompting the appellant to appeal to the Court of Appeal.

Held (allowing the appeal with costs)
Per Abdul Malik Ishak JCA delivering the judgment of the court:

(1) The High Court had erred by holding that under s. 281 of the NLC, the land title could only be deposited by the first respondent as the registered proprietor of the land, in order to create a valid lien. There is no general rule of law that requires the issue document of title need to be deposited by the registered proprietor himself in order to create a lien and to enter a lien-holder's caveat under s. 281(1) of the NLC. Thus, in the instant case, there was no requirement for the first respondent as registered proprietor to personally deposit the land title with the appellant. The intention to create a lien may be gathered from the fact that the issue document of title to the land is deposited with the lender as a security for the loan and for no other purposes. *Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals* (foll); *Paramoo v. Zeno Ltd*; *Zeno Ltd v. Prefabricated Construction Co (Malaya) Ltd & Anor* (foll). (paras 10, 11, 12, 13, 14 & 15)

(2) In the instant case, both the second and the third respondents did not deny that they had deposited the land title with the appellant. The first respondent as the registered proprietor, had also consented to the deposit of the land title as security in favour of the appellant. The first respondent had also authorised both the second and the third respondents to deposit the title to the land with the appellant. Thus the appellant had properly obtained consent to enter the lien-holder's caveat over the land. (paras 16, 17 & 18)

(3) A lien is similar to an equitable mortgage and the interest secured similar to that of a co-proprietor. Once a lien-holder's caveat is entered, the lien-holder becomes a secured creditor. The lien-holder's caveat may be entered at any time during the currency of the loan without losing priority over subsequent purchasers of the land or lease under the lien. The best remedy available to the lien-holder would be, firstly, to obtain a judgment debt under O. 42 of the Rules of the High Court 1980 for the amount due and, secondly, to apply to

A the court for an order for sale of the land or the registered lease pursuant to ss. 257 to 259 of the NLC. (paras 19, 20, 21 & 22)

(4) The High Court judge had further erred: (i) in finding that B there was no transfer of ownership of the land from the first respondent to the second and the third respondents; and (ii) in concluding that the claim that the second and the third respondents were the beneficial owners of the land was unsubstantiated. There was overwhelming evidence to show C that the second and the third respondents were the beneficial owners of the land at the time the land title was deposited with the appellant. (paras 23, 24 & 25)

(5) The word 'proprietor' in s. 281(1) of the NLC should include a beneficial owner. The equitable doctrine of bare trustee is D applicable in Malaysia. Under the doctrine of bare trustee**,** in the context of a valid contract, the vendor is a bare trustee and, consequently, all the rights in the land passes to the purchaser in equity as beneficial owner. (para 26)

E **(6)** The issue of delay raised by the High Court judge was in fact a non-issue. The appellant was within the time prescribed by the Limitation Act 1953 in filing his originating summons. Further, none of the respondents had raised the issue of delay or that they had been prejudiced thereby. (paras 27, 28 & 29)

F **(7)** The words 'other charge on land' in s. 21(1) of the Limitation Act 1953 refers to other encumbrances to which the land is subjected to and would include statutory or equitable charges or liens. (para 30)

G ***Bahasa Malaysia*** *Translation Of Headnotes*

Responden pertama adalah pemilik berdaftar sebidang tanah ('tanah'). Ia telah memindahkan tanah kepada responden kedua dan ketiga, membuat mereka tuan punya benefisial tanah H tersebut. Responden kedua kemudiannya mendapat kemudahan overdraf daripada perayu. Untuk mendapatkan kemudahan overdraf tersebut, kedua-dua responden kedua dan ketiga telah mendepositkan geran-geran hakmilik dengan perayu untuk membolehkan perayu mewujudkan lien ke atas tanah. Perayu I kemudiannya mengemukakan satu kaveat pemegang lien ke atas tanah tersebut. Responden pertama membenarkan deposit suratan hakmilik dengan perayu untuk mendapatkan kemudahan overdraf

perayu. Defendan kedua gagal membuat pembayaran balik di bawah kemudahan overdraf. Perayu memulakan prosiding di Mahkamah Tinggi untuk perintah penjualan. Responden pertama tidak membantah permohonan perayu. Tetapi, Mahkamah Tinggi telah menolak permohonan perayu, oleh itu perayu merayu ke Mahkamah Rayuan.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Abdul Malik Ishak HMR menyampaikan penghakiman mahkamah:

(1) Mahkamah Tinggi salah apabila memutuskan di bawah s. 281 Kanun Tanah Negara, suratan hakmilik hanya boleh didepositkan oleh responden pertama sebagai pemilik berdaftar tanah tersebut, supaya boleh mewujudkan lien yang sah. Tiada terdapat rukun umum undang-undang yang memerlukan isu dokumen suratan perlu didepositkan oleh pemilik berdaftar sendiri supaya dapat mewujudkan lien dan untuk memasukkan kaveat pemegang lien di bawah s. 281(1) Kanun Tanah Negara. Oleh itu, di dalam kes ini tiada keperluan untuk responden pertama sebagai pemilik berdaftar secara sendirian mendepositkan suratan hakmilik dengan perayu. Tujuan mewujudkan lien mungkin dihasilkan dari fakta bahawa isu dokumen suratan kepada tanah tersebut didepositkan dengan peminjam sebagai jaminan untuk pinjaman dan bukan untuk apa-apa tujuan lain. *Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals* (diikuti); *Paramoo v. Zeno Ltd; Zeno Ltd v. Prefabricated Construction Company (Malaya) Ltd & Anor* (diikuti).

(2) Di dalam kes ini, responden kedua dan ketiga tidak menafikan bahawa mereka telah mendepositkan suratan hakmilik dengan perayu. Responden pertama, sebagai pemilik berdaftar, telah membenarkan deposit suratan hakmilik sebagai jaminan bagi pihak perayu. Responden pertama juga telah memberikan kebenaran kepada responden kedua dan ketiga untuk mendepositkan suratan hakmilik tanah tersebut kepada perayu. Oleh itu, perayu telah mendapatkan kebenaran dengan betul untuk memasukkan kaveat pemegang lien di atas tanah tersebut.

(3) Lien adalah sama dengan gadai janji ekuiti dan faedah yang diperolehi adalah sama dengan pemilik bersama. Apabila kaveat pemegang lien dimasukkan, pemegang lien menjadi peminjam yang dijamin. Kaveat pemegang lien boleh dimasukkan pada

bila-bila masa dalam tempoh pinjaman tanpa kehilangan prioriti ke atas pembeli-pembeli kemudian tanah atau pajakan di bawah lien. Remedi yang terbaik yang boleh digunakan oleh pemegang lien pertama, untuk mendapatkan hutang penghakiman di bawah A. 42 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk jumlah yang terhutang dan kedua, untuk memohon ke mahkamah perintah jualan tanah atau pajakan berdaftar di bawah s. 257 dan s. 259 KTN.

(4) Hakim bicara juga telah khilaf (i) dalam memutuskan bahawa tiada pemindahan hakmilik tanah dari responden pertama kepada responden kedua dan ketiga; dan (ii) dalam membuat kesimpulan bahawa dakwaan defendan kedua dan ketiga adalah tuan punya benefisial tanah tidak disokong. Terdapat keterangan kukuh yang menunjukkan responden kedua dan ketiga adalah tuan punya benefisiari tanah pada masa surat hakmilik didepositkan dengan perayu.

(5) Perkataan 'proprietor' dalam s. 281(1) KTN sepatutnya termasuk tuan punya benefisiari. Doktrin ekuiti bare trustee boleh digunapakai di Malaysia. Di bawah doktrin bare trustee, dalam konteks kontrak yang sah, penjual adalah bare trustee dan, oleh itu, segala hak di dalam tanah itu diserahkan kepada pembeli dalam ekuiti sebagai tuan punya benefisiari.

(6) Isu kelewatan yang dibangkitkan oleh hakim Mahkamah Tinggi adalah tiada isu. Perayu telah memfailkan saman pemula dalam had masa yang telah diberikan oleh Akta Had Masa 1953. Juga, responden-responden lain tidakpun membangkitkan isu kelewatan atau isu mereka telah diprejudis.

(7) Perkataan-perkataan 'other charge on land' dalam s. 21(1) Akta Had Masa 1953 merujuk kepada bebanan-bebanan lain tanah itu dan termasuk statutori atau ekuiti gadaian atau lien-lien.

Case(s) referred to:

Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals [2008] 2 CLJ 121 FC ***(foll)***

Mahadevan Mahalingam v. Manilal & Sons (M) Sdn Bhd [1984] 1 CLJ 286; [1984] 1 CLJ (Rep) 230 FC ***(refd)***

Manilal & Sons (M) Sdn Bhd v. Mahadevan Mahalingam & Anor [1986] 2 CLJ 2; [1986] CLJ (Rep) 26 PC ***(refd)***

Mercantile Bank Ltd v. The Official Assigneee of The Property of How Han Teh [1969] 1 LNS 106 HC ***(refd)***

Paramoo v. Zeno Ltd [1968] 1 LNS 95 FC ***(refd)***

Perwira Habib Bank (M) Bhd lwn. Loo & Sons Realty Sdn Bhd & Satu Lagi (No 1) [1996] 4 CLJ 171 CA ***(refd)***
Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors [1974] 1 LNS 175 FC ***(refd)***
United Asian Bank Berhad v. A Subramaniam (As The Personal Representative of Roshammah Samual (Deceased) & Ors [1994] 3 CLJ 681 HC ***(refd)***
United Malayan Banking Corporation Bhd v. Goh Tuan Laye & Ors [1975] 1 LNS 187 FC ***(refd)***
Yeong Ah Chee v. Lee Chong Hai & Anor and Other Appeals [1994] 3 CLJ 20 SC ***(refd)***
Zeno Ltd v. Prefabricated Construction Company (Malaya) Ltd & Anor [1967] 1 LNS 221 HC ***(foll)***

Legislation referred to:
Limitation Act 1953, s. 21(1)
National Land Code 1965, ss. 257, 258, 259, 281(1), 343(3)
Rules of the High Court 1980, O. 42

Other source(s) referred to:
Halsbury's Laws of England, vol 28, 4th edn, Reissue, p 352

For the appellant - JK Lim; M/s Soo Thien Ming & Nashrah
For the 1st respondent - Teoh Choon Hui; M/s Skrine
For the 2nd & 3rd respondents - V Rajadevan; M/s Rajadevan & Assoc

[Appeal from High Court; Originating Summons No: MT1-24-772-1996]

[Editor's note: For the Court of Appeal judgment, please see Perwira Affin Bank Bhd v. Selangor Properties Sdn Bhd & Ors [2003] 5 CLJ 310.]

Reported by Andrew Christopher Simon

JUDGMENT

Abdul Malik Ishak JCA:

The Undisputed Facts

[1] The appellant (Perwira Affin Bank Berhad) granted an overdraft facility of RM130,000 to the second respondent (Mohd Nor Rahmat) on the strength of a letter of offer dated 25 August 1984 between the appellant and the second respondent. It was this overdraft facility that led to the filing of these proceedings in the High Courts at Kuala Lumpur and Shah Alam which culminated in this appeal before us.

[2] Now, the first respondent (Selangor Properties Sdn Bhd) was the registered proprietor of a piece of land known and identified as HS(D) No: 14830, Lot No: 3859, P.T. 1712, Mukim Ulu Klang (hereinafter referred to as "the land"). In 1985, the first respondent transferred the land to the second respondent and the third respondent (Azizam bte Hashim). Legally speaking, the transfer of the land to both the second and the third respondents made them to be the beneficial owners of the land.

[3] Acting in abundance of caution and for the purpose of securing the overdraft facility, both the second and the third respondents then proceeded to deposit the original title deeds of the land with the appellant so that the appellant could create a *lien* over the land. True enough, the appellant then proceeded to lodge a lien-holder's caveat on the land at the land office and this was done on 4 January 1985.

[4] Somehow, the second respondent defaulted in settling the outstanding sums to the appellant under the overdraft facility. The appellant through its solicitors then issued a letter of demand to the second respondent. This letter of demand was dated 25 February 1987.

[5] The second respondent failed to comply with the appellant's letter of demand. This prompted the appellant to institute legal action against the second respondent in the Kuala Lumpur High Court *vide* civil suit number D2-23-1662-87. The appellant succeeded, on 12 September 1987, to obtain a default judgment against the second respondent in the sum of RM101,001.80 together with interests and costs.

[6] Armed with this default judgment, on 22 December 1987, the appellant's solicitors served a letter of demand on the second respondent's solicitors demanding that the second respondent to settle the judgment sum.

[7] Again the second respondent failed to settle the judgment sum. This time the appellant filed an originating summons on 13 December 1996 at the Shah Alam High Court seeking for certain reliefs, *inter alia*, a declaration that both the second and the third respondents are the proprietors of the land and for an order that the land be sold by public auction pursuant to ss. 257 and 281 of the National Land Code 1965 (hereinafter referred to as the "NLC").

[8] At the Shah Alam High Court, the first respondent did not file any affidavit to oppose the appellant's originating summons. Indeed during the hearing of the originating summons, the first respondent's counsel confirmed that the first respondent was not opposing the originating summons on condition that the appellant would not ask for costs against the first respondent. To this request, the appellant agreed.

[9] Unfortunately, on 11 February 2002, the Shah Alam High Court dismissed the appellant's originating summons with costs. Aggrieved by that decision, the appellant now appeals to this court.

Analysis

[10] We have anxiously read the written grounds of judgment of the learned judge of the Shah Alam High Court and we are compelled to conclude that the learned judge was in error and had failed to adequately consider the facts and the law surrounding the whole case. We say that the land title to the land need not be deposited by the first respondent as the registered proprietor in order to create a *lien*. We categorically say that there is no general rule of law that says that the issue document of title need to be deposited by the registered proprietor himself and that would be the first respondent in order to create a *lien* and to enter a *lien*-holder's caveat under s. 281(1) of the NLC.

[11] Chapter 6 of the NLC wherein s. 281(1) of the NLC is housed relates to "*lien*s" generally. Section 281(1) of the NLC reads as follows:

> 281. Creation and effect, of *lien*s.
>
> (1) Any proprietor or lessee for the time being may deposit with any other person or body, as security for a loan, his issue document of title or, as the case may be, duplicate lease; and that person or body:
>
> (a) may thereupon apply under Chapter 1 of Part Nineteen for the entry of a *lien*-holder's caveat; and
>
> (b) shall, upon the entry of such a caveat, become entitled to a *lien* over the land or lease.

[12] We say that an intention to create a *lien* may be gathered from the fact that the issue document of title to the land is deposited with the lender as a security for the loan and for no

other purposes. If authority is required for this simple proposition of the law, the case of *Paramoo v. Zeno Ltd* [1968] 1 LNS 95 FC, a decision of the then Federal Court would suffice. Then there is the case of *Zeno Ltd v. Prefabricated Construction Company (Malaya) Ltd & Anor* [1967] 1 LNS 221, where Raja Azlan Shah J (as His Majesty then was) observed that the intention to create a *lien* may be inferred from all the relevant circumstances of the case.

[13] *Halsbury's Laws of England*, vol. 28, 4th edn, Reissue, at p. 352 defines a "lien" in this way:

> In its primary or legal sense 'lien' means a right at common law in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims of the person in possession are satisfied.

[14] With respect, the learned judge of the Shah Alam High Court had erred by holding that under s. 281 of the NLC, the land title must be deposited by the first respondent who was the registered proprietor and not by anyone else. His Lordship relied heavily on the case of *Perwira Habib Bank (Malaysia) Bhd lwn. Loo & Sons Realty Sdn Bhd & Anor (No 1)* [1996] 4 CLJ 171 CA, a decision of this court, and came to the conclusion that the lien in question was not a valid lien and the lien-holder's caveat in question was also not valid and the court could not enforce the lien. The correct position of the law has been re-stated and clarified by the Federal Court recently in the case of *Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals* [2008] 2 CLJ 121 with a strong coram of Abdul Hamid Mohamad CJ, Abdul Aziz Mohamad FCJ and Azmel Ma'amor FCJ. His Lordship Abdul Hamid Mohamad CJ wrote an interesting judment with Azmel Ma'amor FCJ concurring. While his Lordship Abdul Aziz Mohamad FCJ wrote a concurring separate judgment. For this exercise, we shall refer to the judgment of Abdul Aziz Mohamad FCJ where at p. 188 his Lordship had this to say:

> [146] Subsection (1) of s. 281 is an enabling or empowering provision. It enables or empowers the registered proprietor to deposit his issue document of title with any person or body as security for a loan. It does not lay down the procedure for or the manner of depositing. It ought not to be construed as requiring that the registered proprietor himself must do the act of depositing. It is his will that is important. If he wills that the document of title be deposited with a person or body as security for a loan and it is so deposited, then it is he who has exercised

his power under sub-s. (1). He wills the depositing if he instructs or authorises it or consents to it, and the actual act of depositing may be done by someone else. That would have been my answer to Question No. 4. It follows that my answer to Question No. 5 would have been a negative one.

[15] Continuing somewhere in the middle of para. 147 of the same page and spilling over to p. 189, his Lordship Abdul Aziz Mohamad FCJ had this to say:

Having received the full purchase price, there could be no doubt that, at the time when they parted with the issue document of title in July 1981, they were not concerned with what was done subsequently with it. They had no more interest in it and were indifferent to what might be done with it. They no longer had any will to exercise with regard to it. Therefore if their consent had been sought for it to be deposited with Hong Leong, the chances were that, as may be implied from what was said in that affidavit several years later, they would have automatically given their consent.

[16] In the present appeal before us, both the second and the third respondents did not deny that they had deposited the land title to the land with the appellant.

[17] It must be borne in mind that the first respondent as the registered proprietor had also consented to the deposit of the land title as security in favour of the appellant for the second respondent's overdraft facility. The following facts germane to the occasion at hand must be emphasised:

(a) that the first respondent as the registered proprietor was joined as a party to the originating summons filed by the appellant at the Shah Alam High Court and the first respondent saw it fit not to file any affidavits stating that they did not give any consent to the deposit of the land title with the appellant or to the creation of the lien-holder's caveat;

(b) that the first respondent too did not object to any of the averments by the appellant particularly to para. 3 of the appellant's supporting affidavit wherein it was asserted that the first respondent had authorised the second and the third respondents to deposit the land title to the land and to the creation of the lien-holder's caveat by the appellant; and

(c) that the first respondent's counsel who appeared before the learned judge of the Shah Alam High Court on 24 October 2001 did not register any objection that an order for sale be granted to the appellant in respect of the land.

[18] With these background facts, we are constrained to hold that consent was properly obtained by the appellant to enter the lien-holder's caveat over the land. We too hold that the first respondent had given due authority to both the second and the third respondents to deposit the title to the land with the appellant for purposes of invoking the provisions of s. 281 of the NLC.

[19] A lien is said to be similar to an equitable mortgage where the lien-holder retains the issue document of title together with the duplicate of the registered lease or a copy of the issue document of title issued under s. 343(3) of the NLC. And in such a situation, the interest secured would be akin to that of a co-proprietor. The deposit of the issue document of title must have been made with the intention that the deposited document would serve as a security for the loan and that the loan must not be a registered charge but rather an unregistered interest recognised by the NLC. It is at this point of time that the lien creates what is known as an "equitable" interest in the land or lease and that would legally give the lien-holder the right to enter a lien-holder's caveat which would definitely trigger a statutory interest.

[20] Once a lien-holder's caveat is entered, the lien-holder becomes a secured creditor. This is a very important factor to be reckoned with in the subsequent bankruptcy proceedings of the borrower (*United Asian Bank Berhad v. A Subramaniam (As The Personal Representative of Roshammah Samual (Deceased) & Ors* [1994] 3 CLJ 681).

[21] It must be borne in mind that the lien-holder who retains possession of the issue document of title or the duplicate lease or even a copy of the issue document of title may feel free to enter the lien-holder's caveat at any time during the currency of the loan without losing priority over subsequent purchasers of the land or lease - the subject matter of the lien. See *Mercantile Bank Ltd v. The Official Assigneee of The Property of How Han Teh* [1969] 1 LNS 106 HC.

[22] According to s. 343 of the NLC, a lien can be created over an alienated land or even over a registered lease or even in an undivided share in an alienated land. And the best remedy available to the lien-holder would be, firstly, to obtain a judgment debt under O. 42 of the Rules of the High Court 1980 for the amount due and, secondly, to apply to the court for an order for sale of the land or the registered lease pursuant to the provisions of ss. 257 to 259 of the NLC.

[23] Next, we are constrained to hold that the learned judge of the Shah Alam High Court had erred in finding that there was no transfer of ownership of the land from the first respondent to the second and the third respondents and for that reason his Lordship wrongly held that the claim that the second and the third respondents were the beneficial owners of the land was unsubstantiated.

[24] We categorically say that the first respondent consented to depositing the title to the land with the appellant. Likewise, we also say that the deposit of the title to the land by both the second and the third respondents as beneficial owners of the land to the appellant was sufficient for the purpose of creating a lien and entering a lien-holder's caveat pursuant to s. 281(1) of the NLC.

[25] There is overwhelming evidence to show that the second and the third respondents were the beneficial owners of the land at the time the land title was deposited with the appellant. At this juncture, a quick recital of the available evidence would be sufficient:

(a) Exhibit "TKH3" annexed to encl. 2 which was the appellant's supporting affidavit contained letters from the first respondent to the appellant in reply to queries with regard to the transfer of the land from the first respondent to the second and the third respondents. In the first respondent's letter dated 9 june 1986, the first respondent informed the appellant that their record showed that the first respondent had already transferred the land to the second and the third respondents in 1985 and as such they have no further interest in the land. Again, in the first respondent's letter dated 28 August 1989, the first respondent informed the appellant that as far as the first respondent was concerned, the land had been transferred.

A (b) It must be recalled to mind that the first respondent was joined as a party to the proceedings but had not raised any objections against a declaration being granted by the High Court to declare that the second and the third respondents were the owners of the land.

B (c) It must also be recalled to mind that both the second and the third respondents did not dispute in their affidavits that they were the owners of the land.

C **[26]** We have perused through s. 281(1) of the NLC with a fine toothcomb and we say that the word "proprietor" that appears therein should necessarily include, to all intents and purposes, a beneficial owner. The equitable doctrine of a bare trustee applies in this country. And under the doctrine of a bare trustee, in the context of a valid contract, the vendor is a bare trustee and, D consequently, all the rights in the land passes to the purchaser in equity as beneficial owner. See *Yeong Ah Chee v. Lee Chong Hai & Anor and Other Appeals* [1994] 3 CLJ 20 SC; *Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors* [1974] 1 LNS 175 FC; and *United Malayan Banking Corporation Bhd v. Goh Tuan Laye* E *& Ors* [1975] 1 LNS 187 FC.

[27] Finally, in regard to the issue of delay that was raised by the learned judge of the Shah Alam High Court, we have this to say. That the appellant was within time to file the originating F summons. None of the respondents have ever raised the so-called issue of delay or that they were prejudiced in their affidavits. Had they done so, the appellant would certainly have responded and explained the reasons as to why the delay occurred, if any.

G **[28]** Be that as it may, the originating summons that was filed at the Shah Alam High Court was well within the time permitted and stipulated by law as provided for in s. 21(1) of the Limitation Act 1953 (Revised 1981) and, consequently, the issue of delay has no merit at all.

H **[29]** Section 21(1) of the Limitation Act 1953 (Revised 1981) enacts as follows:

> 21 Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land

I

(1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on land or personal property or to enforce such mortgage or charge, or to recover proceeds of the sale of land or personal property after the expiration of twelve years from the date when the right to receive the money accrued.

[30] The words "other charge on land" that appear in the above mentioned section would refer to other encumbrances to which the land is subjected to and that would necessarily include an equitable charge or lien, statutory or equitable, which arises as a result of depositing a title deed with the lender (*Manilal & Sons (M) Sdn Bhd v. Mahadevan Mahalingam & Anor* [1986] 2 CLJ 2; [1986] CLJ (Rep) 26 PC; and *Mahadevan Mahalingam v. Manilal & Sons (M) Sdn Bhd* [1984] 1 CLJ 286; [1984] 1 CLJ (Rep) 230 FC).

Conclusion

[31] For the reasons adumbrated above, we unanimously allowed the appeal with costs here and below. We also gave an order in terms of all the prayers sought for by the appellant in the originating summons dated 13 December 1996. We set aside the decision of the learned judge of the Shah Alam High Court. We fixed tentatively the date of the auction on 1 July 2009.